

K.G. Knitting Mills, Inc. and International Ladies' Garment Workers' Union, AFL-CIO.¹ Cases 29-CA-17386, 29-CA-17492, 29-CA-17579, 29-CA-17869, 29-CA-17874, 29-RC-7500, and 29-RC-7568

December 21, 1995

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On May 11, 1995, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Petitioner filed answering briefs.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions,³ as modified below, and to adopt the recommended Order.⁴

1. The judge found that Louis Fusco is a supervisor under Section 2(11) of the Act and sustained the challenge to his ballot. We disagree for the following reasons. There is no evidence that Fusco, who works in the Respondent's shipping department, has the authority to hire, fire, lay off, recall, promote, or discipline employees or effectively to recommend these actions. Nor is there evidence that he has the authority to grant time off, assign overtime, assign work, adjust employee grievances, or evaluate employees. Nevertheless, the judge found that Fusco is a supervisor be-

cause he has a key to the factory, he opens up the facility in the morning, he "watches everything" until Manager Singer comes in, and he deals with the trucks that come into the plant. The judge also relied on the fact that shipping department employees believe that Fusco gives orders in the department.

Contrary to the judge, we find that the record fails to show that Fusco is a statutory supervisor as defined by the Act. He possesses no indicia of Section 2(11) supervisory authority. Nor is there evidence that he exercises the independent judgment the Act requires for a finding of supervisory status. In our view, the General Counsel and the Petitioner have not sustained their burden of showing that Fusco is a supervisor. Accordingly, we overrule the challenge to his ballot, and shall order that it be opened and counted.⁵

2. The judge found that the challenges to the ballots of Avram Deutsch, Ileana Green, Riva Kivale, and Hilda Weiss should be sustained on the grounds that they each enjoy a special status. Citing *Dublak Corp.*, 307 NLRB 1138, 1166-1172 (1992), the judge found that these employees do not share a sufficient community of interest with the unit employees to warrant their inclusion in the unit. We disagree with the judge's conclusion, and find that they should be included in the unit.

We find *Dublak*, supra, distinguishable. The employees in question in that case all had leadperson or other special duties and performed production work only in special situations. In contrast, the four employees excluded by the judge, here, all exclusively perform unit work. Deutsch, Green, Kivale, and Weiss all strictly fit within the unit description, they perform unit work, and they perform the same work as is performed by unit employees. We find that the facts that these four employees receive a salary and do not punch a time-clock, receive different health insurance benefits from unit employees, adjust their hours to suit their own convenience, and require less supervision than other unit employees are inadequate bases for their exclusion from the unit. Accordingly, we overrule the challenges to their ballots, and shall order that they be opened and counted.⁶

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, K.G. Knitting Mills, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ United Production Workers Union, Local 17-18 is the Intervenor in this proceeding.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We adopt the judge's finding that Alfredo Leonardo Larrea is an agent of the Respondent. Chairman Gould agrees with the judge that Larrea is also a statutory supervisor and, in addition to the reasons stated by the judge, relies on Manager Singer's uncontradicted testimony that each evening he and Larrea decide which operators should get which work, that Larrea is in charge of the plant for 2-1/2 hours in the morning before Singer arrives, and that Larrea informs employees of the work assignments before Singer arrives. Members Browning and Cohen find it unnecessary to pass on whether Larrea is a supervisor.

³ In the absence of exceptions, we adopt, pro forma, the judge's recommendation that Petitioner's Objections 1, 4, 5, and 8 be overruled, that the challenge to the ballot of Julio DeJesus be overruled, and that the challenges to the ballots of Judith Katz, Teresa Robles, and Norma Flores be sustained.

⁴ We agree with the judge that the Respondent violated Sec. 8(a)(1) by impliedly conditioning a future job for an employee's spouse on his support for Local 17-18. We find it unnecessary to decide whether the Respondent's conduct also constituted a violation of Sec. 8(a)(3).

⁵ For the reasons set forth by the judge, Chairman Gould would adopt the judge's finding that Fusco is a supervisor.

⁶ For the reasons stated by the judge, Member Browning would adopt her recommendation that the challenges to the ballots of these four employees be sustained.

DIRECTION

It is directed that the ballots of Avram Deutsch, Ileana Green, Riva Kivale, Hilda Weiss, and Louis Fusco be added to those that are to be opened and counted by the Regional Director pursuant to the section of the judge's decision entitled "Direction."

IT IS FURTHER DIRECTED that if the revised tally of ballots reveals that the International Ladies' Garment Workers' Union, AFL-CIO has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative. If, however, the revised tally shows that that Union has not received a majority of the ballots cast, the Regional Director shall set aside the election and conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

Elaine Robinson-Fraction, Esq., for the General Counsel.

Dorothy Rosensweig, Esq. (Kaufman, Naness, Schneider & Rosensweig, P.C.), of Jericho, New York, for the Respondent.

Ira Cure, Esq. (Lewis, Greenwald, Kennedy, Clifton & Schwartz), of New York, New York, for the Charging Party.

Douglas Isaacson, of Brooklyn, New York, for the Intervenor.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn and New York, New York, on 7 days between March 14 and June 7, 1994.¹ The consolidated complaint issued on February 10, 1994, alleges that Respondent engaged in certain violations of Section 8 (a) (1), (3), and (4) of the Act.² Respondent denies that it has violated the Act. In the representation case, a representation election was conducted on June 4, 1993. The vote was 23 votes cast for Petitioner ILGWU, 28 votes cast for Intervenor Local 17-18, and no votes cast against participating in a labor organization. There were 22 challenged ballots, a number sufficient to affect the results of the election. The parties filed various objections, and Petitioner's Objections 1, 3, 4, 5, 8, and 10 were consolidated for hearing. Challenges to the ballots of Luis Fusco and Julio DeJesus on the basis of their alleged supervisory status, to the ballots of Judith Katz, Juan Antorio Nunez, and Teresa Robles on the basis of the true identity of the individuals who voted, to the ballots of Avram Deutsch, Ileana Green, Kivale Riva, and Hilda Weiss on the basis of their alleged special status, and to the ballots of Norma Flores, Olga Garcia, Ardelia Felipe, Virginia

¹ On July 20, 1994, the above-captioned cases were consolidated with Case 29-CA-18141, and the hearing was ordered to be reopened on October 12, 1994. On that day, the parties settled Case 29-CA-18141. On October 14, 1994, the hearing was again closed and Case 29-CA-18141 was severed from the above-captioned cases.

² At the hearing, the General Counsel withdrew the allegations stated in pars. 25(a) and (b) and 26 relating to Norma Flores because she was out of the country and would not return to testify.

Acevedo, Virginia Fuentes, Levi Lopez, Maria Gil, Maximina Soriano, and Graciela Barrera on the issue of their temporary or permanent layoff are also at issue.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent and the ILGWU in November 1994, I make the following³

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with its principal place of business in Brooklyn, New York, performs knitting and sewing of garments and related services under contract with various clothing manufacturers. Respondent annually performs services valued in excess of \$50,000 for enterprises outside of New York State or for enterprises in New York State, each of which enterprise is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction exclusive of indirect inflow or indirect outflow. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Ladies' Garment Workers' Union (ILGWU) and the United Production Workers Union, Local 17-18 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent's factory employs about 85 employees during the busy season; there are far fewer workers when business is slow. Many of the employees are Spanish speaking. Although the record is not clear, it appears that there is a sewing department, a parts department, a knitting department, and a shipping and packing department. The sewing department is by far the largest; it employs 50 to 60 employees during the busy season and about 10 to 15 when work is slow. The principals of Respondent are Alexander Kauftheil and Joseph Singer, and do not speak Spanish. They communicate with their many Spanish-speaking employees through certain bilingual employees.

B. Supervisors and Agents of Respondent

Alexander Kauftheil is the president of Respondent. He is responsible for sales, design, the knitting department, the parts department, and he deals with buyers. Kauftheil's office is on the second floor of the factory; he works from 8 a.m. to 6 or 7 p.m., or even later.⁴ Joseph Singer is the vice president of Respondent and is identified as the owner. Singer works from 9 or 9:30 a.m. until 6 or 6:30 p.m. He has an office on the third floor of the factory building and he is the manager of the sewing department. The sewing department includes workers who cut the knit fabric, workers who sew the sweaters on various types of machines, and workers who repair, clean, press, and pack the finished sweaters. There is no dispute that Kauftheil and Singer are managers, supervisors, and agents of Respondent. There is a controversy over

³ Certain errors in the transcript are noted and corrected.

⁴ The factory occupies the second and third floors of a building in Brooklyn, New York.

the General Counsel's allegation that Alfredo Leonardo Larrea, Louis Fusco, and Julio DeJesus are supervisors and/or agents of Respondent.

Larrea, who is paid by the hour, testified that he has been employed as a floor boy in the sewing department for 10 years.⁵ Larrea arrives at the factory at 7 a.m. each day. He places bundles of cut fabric along with patterns and thread in baskets next to the work stations so that they can be made into sweaters, he transports bundles from station to station so that successive operations can be performed to produce a finished product, he cleans the floor, he picks up threads, and he ties garbage boxes together. The cutters put the style numbers on the bundles of work and Singer tells Larrea what price to put on the tickets. There is no serious claim that Larrea hires or fires employees, nor that he imposes discipline or gives raises. However, Larrea is Spanish-speaking and he is the person who interprets between Singer and the Spanish speaking employees who work on the third floor in the sewing department. Larrea himself testified that if employees are going to be late or absent, they tell him in Spanish so that he can communicate the information to Singer in English. According to Larrea, Singer decides if the employees will be granted permission to absent themselves or to come to work late. Larrea maintained that Singer decides which employee will work on a particular machine performing a particular task and that Singer informs him of the decision so that he can tell the employee where to work. Singer decides each night what work will go to the various employees, and Larrea executes the orders in the morning. Singer does not arrive at the factory until 9 or 9:30 a.m., and if a problem arises, Larrea must wait for Singer to appear and cannot make decisions in his absence. Larrea informs Singer when an employee is absent so that Singer can replace the absent worker. Singer decides whether employees will work overtime and Larrea communicates his decision to the Spanish-speaking employees. Similarly, Singer decides which employees will be laid off and which recalled; Larrea makes the telephone calls to recall employees when instructed to do so by Singer. Larrea testified that the factory used to employ foremen from Italy and Argentina and that these people taught him his job, but he denied that he is a foreman: Singer is in charge now. Although Larrea is not a mechanic, he has learned to make minor repairs to the machines by observing the mechanics who are called in to perform repairs. Larrea used to be a member of Local 17-18, but since 1991 or 1992, he has not had dues deducted from his wages. Larrea did not vote in the election.

Singer testified that Larrea works from 7:30 a.m. to 6 p.m. daily and that Larrea punches a timecard. Singer himself usually arrives at the shop at 9 a.m. and leaves at 6 or 6:30 p.m. Singer testified that every evening he tells Larrea what bundles to prepare for the employees to work on the next morning. But Singer also testified that when he talks to Larrea at night, "we decide which operators should get which work." Singer instructs the employees about their duties, but if they speak only Spanish, then Larrea is called to translate. Singer stated that Larrea does not hire employees nor discipline them; if an employee must be reprimanded or discharged,

Singer tells Larrea what to tell the worker. Singer maintained that only he and not Larrea can decide which machine an employee should work on and that only he can change an employee's assignment. If there is to be a layoff, Singer decides who is to be let go and Larrea communicates the decision to the Spanish-speaking employees. Singer decides which employees are to be recalled, and Larrea informs those who are Spanish speaking. Only Singer can decide if an employee is to work overtime. Singer stated that if an employee wishes to be late or absent from work or to leave early, Larrea tells him about it and Singer decides whether to grant permission. When Spanish-speaking employees have questions or problems they go to Larrea first and then Larrea speaks to Singer about the matter. Singer testified that he spends little time in his office; most of the time he is on the shop floor going from one machine to another to check if the work is done well, and overseeing packers, pressers, cleaners, and other employees. During the busy season, Singer may be responsible for the work of 50 to 60 employees. Singer denied that Larrea is a floor manager. Even though Singer does not get to the shop until 9 a.m., he maintained that only he is in charge of the employees. Any problems that arise in the early morning at the factory must await his arrival. Singer testified that if workers are not getting along they tell Larrea and he tells Singer. Then Singer tells Larrea what to do.

Both Larrea and Singer acknowledged that Larrea informed Singer of the employees' activities on behalf of the ILGWU. Larrea testified that he told Singer that Elfega Vargas and Teofila Garcia were talking about the ILGWU. The two women spoke in Spanish and they talked in such a manner that anyone could hear; Larrea had known for years that they supported the ILGWU. Singer testified that before 1993, Larrea had reported to him about Vargas' talk on behalf of the ILGWU. In 1991 and 1992, Singer had observed Garcia handing out papers and talking to other employees about the ILGWU, and Larrea was always telling Singer about these activities. Singer denied asking Larrea about the employees' union activities.

Elfega Vargas' testimony about Larrea's duties and authority confirmed the testimony of Larrea and Singer in many respects.⁶ Vargas testified that Singer runs the factory and that Larrea gives instructions to employees after he has spoken to Singer. For example, Vargas testified that she sees Larrea speak to Singer and then inform an employee to stay and work overtime and that she sees Larrea speak to Singer and then tell an operator which machine to work on. Larrea communicates to employees concerning their work assignments and their requests for time off during the day. Vargas has never seen Larrea discipline an employee. But, she has observed that when Larrea is upset he uses foul language to the employees. For example, on one occasion when Vargas was working on a buttonhole machine that she believed was broken, she repeatedly asked Larrea to fix it and Larrea repeatedly told her that he had repaired it. Larrea told her to use the machine to make the buttonholes and then he said to another employee that "this old fucking woman did them all wrong." Employee Teofila Garcia testified that Larrea assigns work and gives instructions to employees. He spends a lot of time talking to Singer during the day and he distrib-

⁵Larrea is often referred to by various witnesses as Leo or Leonardo. His name is occasionally misspelled in the transcript as "LaRaya."

⁶Vargas, an outspoken activist on behalf of the ILGWU at the factory, was one of General Counsel's chief witnesses here.

utes bundles of work to the employees. Garcia stated that she has asked Larrea for time off and informed him if she would be late. Employee Rosario Lydia Salazar also testified about Larrea's duties and responsibilities, but I shall not rely on her testimony as I have found that it is generally full of contradictions.⁷

The parties stipulated that no dues were deducted and remitted to the Union on behalf of Larrea from at least September 1992.

Based on the credited testimony described above, it is clear that Larrea gets his instructions from Singer. However, Larrea arrives at the factory at 7 a.m. to prepare the bundles of work for employees based on his conversation the night before with Singer where the two men "decide which operators should get which work." From the time the sewing department employees come to the shop at 8 a.m. until Singer arrives at 9 or 9:30 a.m., Larrea is the only one in charge of the machine operators. He tells them what work to do and which machines to work on. If an employee plans to be late or absent, Larrea takes the telephone call and relays the information to Singer. If problems arise during Singer's absence, the employees must talk to Larrea about them. For many of the employees, Larrea is the one who relays to them all the instructions from management and all decisions concerning overtime, layoffs and recalls. If Larrea were not found to be a supervisor of the sewing employees, there would be a gross disproportion between the 50 to 60 employees and the only admitted supervisor, Vice President Singer. I find that Larrea responsibly directs the employees and that he uses some independent judgment in carrying out his duties within the meaning of Section 2(11) of the Act. *Dadco Fashions*, 243 NLRB 1193, 1194 (1979). I find also that Larrea is an agent of Respondent. As acknowledged by Respondent, Larrea is the person who communicates on behalf of management with the employees who cannot speak English. Larrea is their only source of information and instructions. The employees observe Larrea speaking to Singer and then Larrea comes and tells them what goods and machines to work on, when to work, when to go home, and when to come back to work. When Larrea spoke to them, Respondent's employees would reasonably believe that Larrea was "reflecting company policy and speaking and acting for management." *Ella Industries*, 295 NLRB 976 (1989); *Cream of the Crop*, 300 NLRB 914, 917, (1990).

Julio DeJesus testified that he works on a knitting machine. He knows how to fix his machine. When the factory is busy there are four knitters and when the shop is not busy there are three knitters. DeJesus stated that Alexander Kauftheil is the "boss" who tells the knitters what to do. Since Kauftheil speaks only very little Spanish, DeJesus translates Kauftheil's instructions for the Spanish-speaking knitters and helps Kauftheil with these employees: apparently, all but one of the knitters at the shop speak Spanish. DeJesus testified that the others do not ask him if they wish to take a day off or if they will be late or absent, and DeJesus said that he does not tell the others what to do. DeJesus, who has been employed by Respondent since 1977, punches a timecard. He joined Local 17-18 in the 1980s and he receives vacation pay in lieu of taking the vacation pro-

vided by the collective bargaining agreement. For the last 8 or 9 years, he has received a \$150 bonus at the end of the year. The parties stipulated that Respondent regularly deducts dues from DeJesus' pay and remits the sums to the Union. I do not find that the record here supports a finding that DeJesus is a supervisor of Respondent. However, I do find that DeJesus is an agent of Respondent when he performs translations for Respondent so that information and instructions may be transmitted to its Spanish speaking employees. As discussed in *Cream of the Crop*, supra, Respondent regularly communicates with its non-English speaking employees through DeJesus and this is a standard method of communication at the factory.

Louis Fusco is one of three people who have keys to the factory and he usually unlocks the door in the morning. According to Singer, Fusco watches everything that happens and everything that has to be done until Singer's arrival at 9 or 9:30 a.m. Furthermore, Fusco is in charge of handling any trucks that come to the factory. The parties stipulated that Respondent regularly deducts dues from Fusco's pay and remits the sums to the Union. Elfega Vargas identified Fusco as the shipping room supervisor; she stated that Fusco orders products and gives instructions. On the basis of Fusco's possession of keys to the factory and on the basis of Singer's testimony that Fusco is responsible for everything that has to be done and everything that happens at the factory before Singer's arrival, I find that Fusco is a supervisor of Respondent.

C. The Election Campaign

Elfega Vargas began organizing on behalf of the ILGWU in 1989. During 1992 and 1993 she attended union meetings regularly. Vargas testified that in April 1993, Larrea told her on a Friday afternoon that it was time to go to the meeting. She believed that he was referring to the union meeting. On May 5, 1993, Vargas attended a representation hearing at the Regional Office. She had not informed any supervisor that she would be absent from work, and when she returned to the factory she gave a paper to Larrea.⁸ Larrea told Vargas that he was not there for that, and then he waved the paper in front of all of the employees. Larrea was upset, according to Vargas. Later, Larrea gave Vargas some sweaters on which she was to put buttonholes, but Vargas told him that the buttonhole machine was broken. Larrea replied that he had fixed the machine and he yelled at Vargas. She kept returning to Larrea to say that the machine was broken and Larrea kept repeating that it was fixed. Finally, Vargas heard Larrea say that she had gotten the buttonholes all wrong. According to Vargas, Larrea later told Vargas that she was on his blacklist and he told Vargas and Teofila Garcia, "these are going to sleep soon." Garcia did not confirm Vargas' testimony on this latter point although Garcia did testify at great length about other matters relating to Larrea and the election campaign. Garcia has been an active supporter of the ILGWU at the plant since 1989. She did not attempt to hide her activity on behalf of the Union and she openly discussed her views with other employees during breaks in the workday. Garcia testified that Larrea told her that he knew who attended the ILGWU meetings and that he had a videotape of such a meeting. According to Garcia, she went to the

⁷ I shall not rely on any of Salazar's testimony herein and thus I deem it unnecessary to discuss that testimony.

⁸ Apparently, this was a subpoena.

hearing on May 5 and tried to give Larrea the paper she received there. Garcia testified that Larrea said he could not take it because he was eating. An hour later when she gave him the paper, he read it out loud. After this incident, Larrea stopped talking to Garcia except when he had to give her work. Larrea testified that he knew that Garcia, Vargas, Santos Ortiz, and Rosario Salazar went to a conference at the Regional Office and returned to the factory with yellow papers. Larrea stated that he was not given the yellow papers by the employees, that the workers went to Kauftheil with the documents and that he did not read these yellow papers out loud in front of other employees. Larrea denied that his attitude toward the employees who had attended the meeting changed after they returned to the factory. He denied making the statements attributed to him by Vargas and Garcia. I credit Larrea concerning these matters. The testimony of Vargas and Garcia describing the incidents is not convincing and I shall not rely on it.

Vargas testified that on June 4, 1993, DeJesus made an announcement over the factory microphone in English and Spanish asking all employees to come to the back. About 35 employees gathered there, including Larrea and Louis Fusco; DeJesus translated a speech given in English by a Jewish man.⁹ The man said he was representing the Company. He told the employees not to be fooled by the "other union"; the "other union" was from the street while Local 17-18 gave the employees everything. If the employees voted for the ILGWU the factory would be closed and the employees would have to fly, whereas with Local 17-18 there would be a lot of work. Teofila Garcia testified to much the same effect, except that she said the man was a representative of Local 17-18. Garcia stated that she had seen the man in the factory before but that she had never seen him in the offices of Local 17-18. Santos Ortiz, a presser at the factory, testified that in June 1993, Julio DeJesus announced that there would be a meeting. At the meeting, a Jewish man spoke and Julio translated; the man told the employees that he represented the Company and he said that the employees should not vote for a union from the streets, but that they should vote for a union that they knew. The speaker said that he would see to it that they received a raise of about \$10 per week. DeJesus did not testify concerning this preelection meeting. I credit the testimony of Vargas, Garcia, and Ortiz that shortly before the election, the employees were called to a meeting during working time where a person who identified himself as a representative of the company instructed the employees to vote for Local 17-18 and not to vote for the ILGWU, told the employees that there would be no work and the factory would close if they voted for the ILGWU but that there would be work if they retained Local 17-18 and promised the employees a raise if they voted for Local 17-18.¹⁰ The employees were summoned to the meeting and the speaker's remarks were translated into Spanish by DeJesus, an agent of Respondent who was regularly used to communicate instructions to the Spanish-speaking employees. Supervisors Larrea and Fusco were present. I find it insignificant that the individual employees who testified about this meet-

ing did not agree in every detail about who was at the meeting or what exact words were used by the speaker. It is significant, however, that DeJesus who was called by Respondent as a witness here, did not deny any of the testimony given about the meeting. Moreover, Larrea did not deny that he was at the meeting and he did not contradict any of the witnesses who testified about the content of the meeting. Nor did anyone else on behalf of Respondent deny that the meeting was held during working hours, that DeJesus used the microphone to call people to the meeting, nor that the meeting took place in the circumstances described by the various witnesses. I find that the Respondent violated Section 8(a)(1) of the Act by threatening to close the factory if the employees voted for the ILGWU.

Santos Ortiz, a presser, testified that before he went to the preelection conference at the Regional Office, Singer and Larrea asked him if he had to attend. According to Ortiz, Singer spoke in English and Larrea translated his words into Spanish. Singer told Ortiz not to say anything bad about the Company. Singer asked Ortiz which Union he would vote for; when Ortiz replied that he would vote for the ILGWU, Singer told him that the ILGWU "didn't look for another job for [Ortiz]." Because Singer was upset, Ortiz said he would vote for Local 17-18. Ortiz testified that the day before the election, he spoke to Singer about bringing his wife to the United States. Singer said that Ortiz' wife could have a job in the cleaning area and then Singer reminded Ortiz to vote for Local 17-18. Later that day, Singer told Ortiz not to lie to him, and Ortiz promised not to lie; thereupon Singer directed Ortiz to vote for Local 17-18 and Ortiz agreed. I credit Ortiz concerning the substance of his conversations with Singer. Although Singer denied that he spoke to Ortiz concerning his wife, a position paper submitted to the Regional Office on behalf of Respondent acknowledged that some conversation took place between the two men on the subject of a job for Ortiz' wife. Furthermore, Ortiz' testimony had the ring of truth and was generally consistent with his affidavit given to a Board agent. I find that by asking Ortiz which Union he would vote for while conveying to Ortiz the idea that his job would be threatened if he supported the ILGWU, Singer engaged in a coercive interrogation. Singer is a high official of Respondent, the information sought by Singer was very specific, the interrogation took place at the jobsite, and the manager's attitude convinced Ortiz that he should not give a truthful answer but instead say that he would not support the ILGWU. Thus, Respondent violated Section 8(a)(1) of the Act. *Bourne v. NLRB*, 332 F.2d 47, 48 (1964). Further, by impliedly conditioning a future job for Ortiz' wife on his support for Local 17-18, Respondent violated Section 8(a)(1) and (3) of the Act. The fact that Singer mentioned his desire that Ortiz should vote for Local 17-18 immediately after agreeing that he would employ Ortiz' wife convinces me he intended Ortiz to believe that the promise of a job was linked to support for Local 17-18 rather than the ILGWU.

Vargas testified that she served as an election observer for the ILGWU. According to Vargas, when the election was over, Larrea looked at her and said, "I am going to give this one a blow." While he was speaking, Larrea made a hand movement indicating that he was hitting his hand with his fist. Vargas' affidavit does not mention the statement nor the hand movement. Vargas told the Board agent who took her

⁹ All of the employees identified the speaker at this meeting as a Jewish man wearing traditional religious garb.

¹⁰ The promise of a raise was not alleged as a violation in the complaint here.

statement that Larrea said, "I am going to stick it up to this one." Larrea denied making these comments, stating that he would not speak disrespectfully to an older person in this manner. However, I credit the testimony that Larrea often used bad language to the sewing department employees. I credit Vargas' testimony on this point; the difference between Larrea's statement as related in the affidavit and in the instant hearing is not significant because the import is similar. Thus, I find that Respondent threatened Vargas with unspecified reprisals because she served as the observer for the ILGWU in the election, and I find that Respondent violated Section 8(a)(1) of the Act.

D. Refusal to Recall Employees

On July 20, 1993, Elfega Vargas and Teofila Garcia asked for permission to take 4 weeks of vacation. Vargas testified that she and Garcia spoke to Singer and presented him with letters asking for 4 weeks' vacation in August. According to Vargas, Singer told her that he could not give her permission because of the amount of work in the factory, and he wrote at the bottom of Vargas' letter the words, "not at this time."¹¹ Vargas testified that there was not a lot of work in the factory on July 20, but that Singer said he could not let her go on vacation because there was going to be a lot of work in the next week. On August 2, Vargas gave Singer another letter which stated that she wanted to be absent for 3 weeks to see her "ailing father," and that she would bring proof that her father was "seriously sick." Vargas told Singer that she would return on September 1. Vargas' affidavit states that she told Singer that she would return in 3 weeks because there was a lot of work. At the hearing Vargas testified that her father was not seriously ill but that he was in a wheelchair and that she wanted to see him. Teofila Garcia testified that at first Singer told her she could not take a vacation and that it was very important that Garcia remain on the job. After she told him that her mother would have an operation on August 24, he approved her request and told her to return as soon as possible. Singer wrote at the bottom of Garcia's letter that she had to bring proof of her mother's illness.¹² Kauftheil testified that Garcia and Vargas had come up to him with their letters on the shop floor and that he had called them into the office and had spoken to them using DeJesus as an interpreter. Kauftheil told them that the season was approaching its end and that the goods had to be delivered; he begged them not to take a vacation at that time. He suggested that they go in the slow time. Kauftheil was not sure when the work would be completed, and he tried to persuade them to stay on the job. However, Vargas and Garcia insisted that they had to leave then. Kauftheil consulted Singer, who told him that the two employees were needed in the shop. Then Kauftheil spoke to Vargas again; he asked her to take her vacation when the work was slow, and he wrote on her paper "not at this time" and signed with his initials. At about this time, Kauftheil spoke to Garcia in the same manner, but Garcia said that her departure was required by an emergency. Kauftheil told her that if it was an emergency, he had to say yes because "someone might die." At the beginning of August, Vargas spoke to Kauftheil and said that she too had an emergency because her father was sick. Sing-

er testified to the same effect as Kauftheil: Vargas asked for a vacation at the busiest time of the year and he told her it was not possible. Later, when Vargas informed him that her father was sick, he gave her permission to be absent but he instructed her to bring proof from a doctor. Singer testified that Garcia similarly had been refused permission to go on vacation at the end of July because there was too much work. When Garcia informed Kauftheil a few days later that her mother was sick and that it was an emergency, Kauftheil let her go but he asked her to furnish him with proof of the emergency. Kauftheil testified that he warned both Garcia and Vargas that there might not be work for them when they returned because the season was ending. He told them that business was hard to get. Kauftheil recalled that when Vargas returned she handed him proof of her father's illness and he asked Singer to try to find work for her. Garcia came back a few days later but, according to Kauftheil, she did not have any proof that she had left for an emergency visit to her mother. Singer told Kauftheil that there was no work for Garcia.

Vargas testified that when she returned to the factory after her vacation she saw Kauftheil who informed her that there was no more work but that there would be some work after the Jewish holidays.¹³ Vargas gave Kauftheil some documents showing that her father was ill: the papers show that Vargas' father has been treated for a variety of ailments for over 1 year and that he was unfit to travel alone. According to Vargas, Kauftheil asked Larrea where he could put Vargas to work, but Larrea said that there was no work. Vargas then asked Larrea why some new people were working, and Larrea told her to wait for Singer. When Singer arrived at the factory at 9:30 a.m., he said that there was no work. Vargas testified that she worked on September 1, 2, and 3 on a Singer machine, and that on September 3, Larrea told her that "the old man" said there was no more work. Two or three other people in the Singer machine department were also laid off on September 3. Singer testified that when Vargas left in August she had been working on buttons and buttonholes; there was a lot of work in August which lasted until the beginning of September. According to Singer, when Vargas returned there was almost no work and no other employees were working on buttons and buttonholes. After working for 3 days in September and being laid off, Vargas was called back to complete a small order in November; she worked on buttons and buttonholes from November 29 until December 7. Singer stated that a special order arrived in September which required the use of a remolding machine with a new attachment for a difficult rayon fabric. Vargas was called in to do this work, but according to Singer, she was not able to handle the job and spoiled the work which then had to be done over. Singer stated that Vargas is only able to give effective production on buttons and buttonholes; although she knows how to operate both a crochet machine and a machine to sew on pockets, she is not an efficient producer for those tasks.

Elfega Vargas testified that when she was laid off on September 3, Singer department employees Blanca Roque and Dulce Soriano were laid off as well. Vargas stated that Soriano, who has less seniority than Vargas, was recalled the

¹¹ As will be discussed below, the notation was made by Kauftheil.

¹² This notation was also made by Kauftheil.

¹³ Vargas did not testify concerning the date she returned from her vacation.

following week.¹⁴ Vargas filed a grievance with Local 17-18 concerning her layoff, but the Union informed her that the layoff was in accord with principles of departmental seniority. Vargas agreed that layoffs at the factory are made by department and that employees cannot avoid a layoff by switching into a different department. Vargas testified that on November 8, 1993, she returned to the factory to inquire about her job and was told by Singer and Kauftheil that there was no work for her. Nevertheless, she stated that there were new people with less seniority working on the Singer machine and sewing buttons; these were Ardelia Felipe and Lourdes Latelpa who had previously worked cleaning sweaters. Singer testified that he could not recall whether Ardelia Felipe was employed when Vargas returned from her vacation, but he was sure that Latelpa had not been recalled. Kauftheil testified that in September, 1993, there were employees on layoff with more seniority than Vargas; these were Lissa, Schwartz, and Kivale. In September 1993, about 20 employees were laid off.

Vargas stated that other employees have taken time off and were reinstated; these were Avilia Negreta, Margarita Vargas, Carolina Alvarez, and Alicia Sierra. Singer testified that Lucia Vargas left in August 1993 for a vacation and was not reinstated because she had absented herself during the busy season. He recalled that Sierra had not taken a leave in 1993 and that Alvarez was working when Elfega Vargas left on her vacation and was still working when Vargas returned. Singer could not recall if Negreta was employed when Vargas returned from her vacation. Kauftheil stated that Lucia Vargas, who performed the same work as Elfega Vargas, had cited a family reason for leaving work in August 1993; she never returned to the factory and never asked for her job back. Margarita Vargas left in August 1993 on vacation over Kauftheil's objections that he needed her skills. Kauftheil explained that he reinstated Margarita Vargas because she could do special sewing that was difficult and she was hard to replace.

Teofila Garcia, who had been working on the label machine when she departed on vacation in August 1993, returned to the factory on September 7. Larrea and Singer told her that there was no work. Garcia testified that she gave both Singer and Kauftheil proof of her mother's illness. The documents show that her mother's cataract operation did not take place as scheduled because of intervening complications. Garcia believed that a less senior employee, Guadalupe Gutierrez, was working in her place and she filed a grievance with Local 17-18, but the Union told her that she could not displace someone in another department. Garcia acknowledged that when she left in August, Gutierrez had been making samples and that Gutierrez was making samples upon her return. Garcia also maintained that other employees less senior to her were working in the Singer department, Marguerita Vargas and Lucia.¹⁵ Singer testified that when work is slow, he retains those employees who can work well on all of the machines; he named Margarita Vargas and Carolina Alvarez as being the most proficient. Singer stated that he does not always lay off employees in order of seniority; he keeps

those employees who can work on all of the machines. The contract with Local 17-18 provides that departmental seniority prevails "provided that the senior employee is qualified to perform the available work," but Singer disregards seniority because "I have to keep the workers who . . . go from one machine to another . . ." However, Singer maintained, he always recalls employees in order of seniority. He expressed his belief that an employee who leaves the factory during the busiest time loses seniority if the employee fails to bring proof that the absence was due to an emergency. Singer testified that when Garcia returned to the factory in September, there was no work for her and she did not bring proof that she had left for an emergency.

In response to the accusations of discrimination, Singer maintained that he had known for years that Elfega Vargas and Teofila Garcia supported the ILGWU and that during that time they had nevertheless worked 48 to 50 weeks per year. Singer said that 1993 was a very bad year and that there was no work for any but those employees who could work efficiently on all of the machines in the department. Kauftheil stated that he had known for a few years that Garcia and Vargas supported the ILGWU and that he had not discriminated against them and had not denied them work because they campaigned for the ILGWU. He pointed out that Vargas had indeed been called back for a few days of work in September and in November and December.

From the recital of the facts above, it is clear that no perfectly accurate understanding of Respondent's operations in the fall and winter of 1993, and the spring of 1994, can be obtained. There are no accurate records here to show exactly who was working on any given day; I have been given no complete listing of employees and their dates of hire, layoff, and rehire. Both Vargas and Garcia testified that employees with less seniority were doing their jobs after they were laid off. However, it is impossible to verify that the names given indeed represented actual employees. It is also unclear what work these purported employees actually performed. Respondent introduced a table showing the number of workers and the gross payroll by weeks; this table discloses that there was a more or less consistent decline in the number of workers from 59 to 38 from August 1993 to May 1994.¹⁶ However, the decline in gross payroll does not always correlate with the number of workers, and there is no breakdown of overtime and regular hours worked. In order to decide whether Vargas and Garcia were in fact discriminatorily refused work and laid off, I am faced with the task of determining credibility and weighing the incomplete and often confusing evidence that appears in the record.

There are problems with the testimony of both Vargas and Garcia concerning the events surrounding their departures on vacation. They both testified that they dealt with Singer and that he wrote comments on their letters requesting leave time, whereas it is clear that Kauftheil's handwriting and initials appear on the letters. I credit Kauftheil's testimony about their various requests and his responses to them. I find that both Vargas and Garcia asked for 4 weeks' vacation in August, admittedly the busy season at the factory, and that they were denied permission to take leave. Then, each employee independently told Singer and Kauftheil that an emer-

¹⁴ Roque and Dulce Soriano do not appear on any of the lists of employees whose names were stipulated on the record.

¹⁵ It is not clear whether this is the Lucia Vargas who left and was not reinstated.

¹⁶ During one week in May 1994, there were as few as 20 employees.

agency situation required her absence in August. Vargas promised proof that her father was “seriously sick”; in fact, as she acknowledged, he was not seriously ill but she wanted to see him. Garcia said she had to see her mother because she was to undergo an operation and Kauftheil thought that “someone might die.” In fact, Garcia’s mother was scheduled for a cataract operation that did not take place. It is clear that Vargas and Garcia had impaired recollections about the events and that they were less than candid with Respondent in the summer of 1993 when they asked to take vacations at a very inconvenient time. Thus, their testimony is not very reliable. On the other hand, Singer and Kauftheil were not models of clarity in their testimony. Singer could not recall whether certain employees were working when Vargas and Garcia asked for their jobs back. Neither Singer nor Kauftheil replied fully to all of the allegations made by Garcia and Vargas that their own work was being done by certain employees with less seniority.

I conclude that many of the assertions made by Elfega Vargas and Garcia that other employees with less seniority were doing their work after they returned are not supported by the evidence. First, it is clear that employees were being laid off in September 1993 and through 1993 and 1994. There was indeed less work to do at the factory. Then, although Vargas stated that Dulce Soriano had less seniority and was recalled shortly after the layoff of September 3, 1993, there is no evidence that she was sewing buttons and buttonholes as Vargas was doing prior to her layoff. Further, Vargas testified that on November 8, 1993, Ardelia Felipe and Lourdes Latelpa were sewing buttons, but Singer testified that he was sure that Latelpa was not recalled to work. Singer could not recall Felipe’s status. However, Singer testified that no one was sewing buttons and buttonholes full time and he testified that Vargas was not able to perform as proficiently in other tasks. Thus, he had to retain employees who could move from one machine to another and do so in an efficient manner. Further, Singer recalled that some employees with greater seniority than Vargas were on layoff at this time. Garcia stated that Guadalupe Gutierrez, an employee with lower seniority, was working while she was laid off; but it is clear that Garcia had been sewing labels when she left on vacation and that Gutierrez was making samples. A grievance filed by Garcia over Gutierrez’ work assignment was not resolved in Garcia’s favor. Garcia also cited Margarita Vargas and Lucia, an employee whose last name Garcia did not furnish.¹⁷ Singer testified that he retained Margarita Vargas because she is an employee who can be assigned to any task. Singer testified that he has a practice of laying off employees out of seniority rank where that is necessary to keep a less senior employee who can be shifted from machine to machine as required by the available work. Respondent offered extensive un rebutted testimony that showed that it frequently laid off more senior workers where less senior employees were able to work at higher efficiency on many of the machines in the sewing department. This practice seems to be permitted by the collective-bargaining agreement which mentions that to avoid a layoff a senior employee must be “qualified to perform the available work.” In any event, the General Counsel does not allege that Re-

spondent violated the Act by failing to observe the collective-bargaining agreement with Local 17-18. Rather, the complaint alleges that Respondent violated the Act by failing to reinstate Elfega Vargas and Teofila Garcia when they returned from their vacations because they supported the ILGWU. Further, it is clear that the busy season was over in September and that a general layoff was underway. Respondent has produced uncontradicted evidence that business and the payroll began to decline in the fall of 1993. Vargas and Garcia had been active in support of the ILGWU for many years and had been retained by Respondent without any incident. Even after Vargas was laid off on September 3, 1993, she was recalled sporadically to perform work when it became available. I conclude that the General Counsel has not met the burden of proof to show by a preponderance of the evidence that Vargas and Garcia were refused reinstatement or were laid off for discriminatory reasons. On the facts before me, I cannot find that discrimination was a motivating factor in their failure to be put back to work. Rather, I find that the motivating factors for the failure to reinstate and for the layoff was lack of work, the availability of employees who were more versatile and could be shifted from machine to machine without loss of efficiency, and a lingering feeling that Vargas and Garcia had left during a busy time for emergencies that were not true emergencies. Indeed, Vargas and Garcia had supported the ILGWU for a good number of years and had worked consistently for the Respondent. Thus, I need not perform the analysis required by *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

III. THE REPRESENTATION CASE

A. *The Challenged Ballots*

Louis Fusco and Julio DeJesus were challenged as supervisors. I have found above that Fusco is a supervisor and the DeJesus is not a supervisor. I shall recommend that the challenge to Fusco’s ballot be sustained and that the challenge to DeJesus’ ballot be overruled.

Judith Katz, Juan Antorio Nunez, and Teresa Robles were challenged on the basis of their true identities. Elfega Vargas testified that a former employee whom she recognized as Rosie Stein appeared and asked for a ballot under the name Judith Katz. The name Rosie Stein did not appear on the *Excelsior* list but the name of Judith Katz did appear on the list. Vargas’ testimony about Rosie Stein was uncontradicted. I shall recommend that the challenge to Judith Katz’ ballot be sustained. Elfega Vargas testified that a fellow employee known to her as Luis Fermin appeared and asked for a ballot under the name of Juan Antorio Nunez. The name of Luis Fermin was not on the *Excelsior* list, but the name of Juan A. Nunez-Ruiz was on the list. Vargas testified that although the man punched a card as Luis Fermin, he had told her that he had previously worked under the name of Juan Ortiz Nunez. There is no basis in the record for concluding that the disputed employee is Juan A. Nunez-Ruiz; the employee had told Vargas that he was Juan Ortiz Nunez. I shall recommend that the challenge to the ballot of Juan Antorio Nunez be sustained. Elfega Vargas testified that an employee whom she knows to punch a timecard as Nelly Molina Ramos asked for a ballot as Teresa Robles and was challenged on that basis. The name of Teresa Robles was on the

¹⁷ If Lucia is Lucia Vargas, the un rebutted testimony of Respondent shows that she left and was not reemployed.

Excelsior list but Nelly Molina Ramos was not. The record here shows that an employee by the name of Teresa Robles was hired June 19, 1992, and that an employee named Nelly Molina was hired on February 17, 1991. The two employees have different social security numbers but apparently share the same home address. The evidences convinces me that Robles and Molina are in fact two different people and I shall recommend that the challenge to the ballot of Teresa Robles be sustained.

The ballot of Avram Deutsch was challenged on the basis of his special status. Deutsch, a knitter and mechanic, who has worked for Respondent for 20 years, testified that his wife is the sister of the late mother-in-law of Kauftheil. Deutsch is one of three people who have a key to the factory and he often opens the door to the shop. Deutsch earns a fixed salary of \$500 per week, he does not punch a timeclock and he enjoys medical insurance paid for by Respondent that is in addition to the insurance provided by Local 17-18. I shall recommend that the challenge to the ballot of Deutsch be sustained. Although Deutsch works in the same area as the other unit employees, he is salaried, he does not punch a timeclock, he has special medical insurance, and he has a key to the factory. *Dublak Corp.*, 307 NLRB 1138, 1166-72 (1992). The ballot of Ileana Green was challenged on the basis of her special status. Green is salaried and does not punch a timeclock. Teofila Garcia testified that she observes that Green arrives late at work and leaves early, and that Green does not work on Friday. The ballot of Kivale Riva, whose name may actually be Riva Kivale, was challenged on the basis of her special status. Riva is salaried and does not punch a timeclock. Teofila Garcia testified that Riva has preference in that she arrives late, leaves early, and does not work on Friday. The ballot of Hilda Weiss was challenged on the basis of her special status. Weiss, who is the employee in the sewing department charged with mending holes, is salaried, and does not punch a timeclock. Weiss testified that she does not work on Friday because she is too tired. She does not work any set hours and she goes home whenever she feels like it. I shall recommend that the challenges to the ballots of Green, Kivale, and Weiss be sustained. I find that they do not share a sufficient community of interests with the unit employees. With respect to these three employees, their wages and the hours of their work, two of the most significant matters to any worker, are not set in common with those of the unit employees. Their degree of supervision is different in that they set their own hours of arrival and departure. Their wages do not depend on how many hours they work and they can leave the factory when they feel like it; they do not work on Friday although the factory is open on that day. *Dublak Corp.*, *supra*.

The remaining challenges are to employees who were purportedly permanently laid off before the election. The Board explained in *Sol-Jack Co.*, 286 NLRB 1173 (1987):

The test for establishing the eligibility of a laid-off employee to vote in a representation election was set forth in *Higgins, Inc.*, 111 NLRB 797 (1955). This test looks to all the facts and circumstances in the record to determine whether there is a reasonable expectancy, on the date of the election, that an individual will return to work in the near future. The "objective factors" the Board employs to decide whether an employee pos-

sesses such an expectancy include "the Employer's past experience, the Employer's future plans, and the circumstances of the layoff, including what the employees were told as to the likelihood of recall." [Citations omitted.]

Singer testified that based on his experience, the factory's busiest time has usually been between June and November. By the end of October, there is usually a layoff. In May, the new season begins and the employees are called back gradually. Singer testified that there have been layoffs of more than 4 months at the shop. He stated that if a worker is needed, that worker retains seniority even after a layoff of over 4 months.¹⁸ The record provides examples of employees laid off in 1992 who were recalled more than 4 months later: these include Ardelia Felipe, laid off December 6, 1992, and recalled July 4, 1993; Kivale Riva, laid off December 13, 1992, and recalled April 19, 1993; Luz Maria Gail, laid off December 20, 1992, and recalled June 27, 1993; and Olga Garcia, laid off November 22, 1992 and recalled August 15, 1993. Thus, it is clear that even an employee with a lengthy layoff might be recalled based on the Respondent's past experience. Singer and Kauftheil stated that the layoff of 1992 lasted longer than most and that business was generally bad in 1993. However, based on the factory's past experience, business would pick up again and employees would be recalled as they were needed. Certainly, both Singer and Kauftheil gave the impression that they were trying to get more business for the shop.

The record shows that Norma Flores was laid off in November 1992 and was not rehired. At the time of the hearing, she had left the country. Given the fact that Flores did not return to testify even though some of the allegations of the complaint depended on evidence that she was to supply, it seems clear that Flores did not have a reasonable expectation of recall.

Maxima Soriano was hired on July 28, 1985, and laid off on December 6, 1992. Soriano testified that she has been laid off and recalled in the past. Soriano testified that when she was laid off she was told that she would be recalled. Soriano spoke to Larrea about her wish to be recalled. On the day of the election, according to Soriano, Larrea said that he would call her back as soon as Singer gave his approval. Although Larrea denied that he had any conversations with Soriano, I credit Soriano's testimony. I find that Soriano had a reasonable expectation of recall in the near future on the date of the election.

Virginia Acevedo was hired on June 9, 1991, and laid off on November 29, 1992. She testified that in March and April 1993, she went to the factory and spoke to Singer about being recalled to work. Singer said that there was no work at that time, but that he would recall her when there was work. On one occasion, Singer told Acevedo that he would call her after the election when there was work for her. Singer testified that he could not recall an employee by the name of Virginia Acevedo, although he acknowledged that someone by that name had worked for the Company. Despite the fact that Singer could not recall who Acevedo was, he testified that he did not speak to her about calling her back from

¹⁸This is so even though the contract with Local 17-18 provides that employees lose seniority after 4 months on layoff.

layoff. I credit Acevedo's testimony. I find that on the day of the election, Acevedo had a reasonable expectation of recall in the near future.

Olga Garcia, Ardelia Felipe, and Luz Maria Gil did not testify here. As stated above, all of them were in fact recalled to work by the Company in the summer of 1993. Based on the past experience that employees were recalled even after lengthy layoffs and on the fact that the Respondent's future plans certainly included the effort to obtain more business and recall employees, I find that Garcia, Felipe, and Gil had a reasonable expectation of recall on the day of the election. I note, too, that neither Singer nor Kauftheil testified that these employees did not have a reasonable expectation of recall, although both were questioned at very great length about their method of determining layoffs and recalls and about many individual employees. I make the same finding as to Virginia Fuentes, Levi Lopez, and Graciela Barrera. These employees were laid off in November 1992, together with other employees who were later recalled by the Company. There is no testimony in the record that on the day of the election these three employees did not have a reasonable expectation of recall.

Based on my findings above, I shall direct that the valid ballots be counted and a revised tally be prepared and served on the parties.

B. The Objections

Objection 1 states that the "employer destroyed the laboratory conditions of the election by designating Julio DeJesus as an observer. Mr. DeJesus is a supervisor." I have found above that DeJesus is not a supervisor.

Objection 3 states that the "employer coercively interrogated workers prior to the election to convince them not to vote for the ILGWU." I have found above that Singer coercively interrogated Ortiz on the day before the election.

Objection 4 states that the "employer told a laid-off worker she would never be recalled to work because of her support for the ILGWU." This objection is based on the testimony of Rosario Lydia Salazar whom I have found not to be a credible witness. I have determined that I cannot make any findings based on Salazar's unreliable testimony.

Objection 5 states that the employer "told one worker she would never be returned to work unless she supported local 17-18." This objection is based on the testimony of Salazar whom I have found to be an unreliable witness.

Objection 8 states that the employer "reduced the hours of Lydia Salazar, a known ILGWU supporter." This objection is based on the testimony of Salazar whom I have found to be an unreliable witness.

Objection 10 states that, "Supervisors acted in a coercive and intimidating manner throughout the election campaign," including threats to close the plant if the ILGWU should be successful, threats to cease employing workers who supported the ILGWU and appeared at the NLRB, threats to reduce hours of work and interrogations on the day of the election. I have found above that Respondent unlawfully threatened to close the factory if the employees voted for the ILGWU.

To the extent that Objections 3 and 10 are based on conduct found to violate the Act, I shall recommend that they be sustained. The acts described in Objections 3 and 10 constitute unfair labor practices which occurred during the criti-

cal preelection period. I find that such conduct reasonably tended to interfere with the employees' free and untrammelled choice in the election by interfering with their choice to select the International Ladies' Garment Workers' Union as their collective-bargaining representative. Accordingly, I shall direct that if, after a revised tally is issued, the International Ladies' Garment Workers' Union has not received a majority of the valid ballots counted, the election be set aside and the Regional Director for Region 29 shall conduct a new election when he deems the circumstances permit.

CONCLUSIONS OF LAW

1. By threatening to close the factory if the employees selected the International Ladies' Garment Workers' Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

2. By coercively interrogating an employee about his support for a union and by impliedly conditioning a future job for an employee's spouse on his support for Local 17-18, Respondent violated Section 8(a)(1) and (3) of the Act.

3. By threatening an employee with unspecified reprisals because she served as an observer for the International Ladies' Garment Workers' Union in an election, Respondent violated Section 8(a)(1) of the Act.

4. The General Counsel has not proved that Respondent engaged in any other violations of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

ORDER

The Respondent, K.G. Knitting Mills, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close the factory if the employees select the International Ladies' Garment Workers' Union as their collective-bargaining representative.

(b) Interrogating employees about their support for a union and impliedly conditioning the employment of employees' spouses on their support for Local 17-18.

(c) Threatening employees with reprisals because they serve as election observers for the International Ladies' Garment Workers' Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."²⁰ Copies of the notice, in English, Spanish, and Yiddish, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

DIRECTION

IT IS FURTHER DIRECTED that the Regional Director for Region 29 shall, within 10 days from the date of this decision, open and count the ballots of Julio DeJesus, Maxima Soriano, Virginia Acevedo, Olga Garcia, Ardelia Felipe, Luz Maria Gil, Virginia Fuentes, Levi Lopez, and Graciela Barrera, and that he prepare and serve on the parties a revised tally.

If the revised tally in Case 29-RC-7500 and 29-RC-7568 reveals that the International Ladies' Garment Workers' Union has received a majority of the valid ballots cast, the Regional Director shall issue a Certification of Representative. If, however, a revised tally shows that the International Ladies' Garment Workers' Union has not received a majority of the valid ballots cast, the Regional Director shall set aside

²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the election and conduct a new election when he deems the circumstances permit.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close the factory if you select the International Ladies' Garment Workers' Union as your collective-bargaining representative.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT imply that in order to be employed in the factory your family must support Local 17-18.

WE WILL NOT threaten you with reprisals if you act as an observer for the International Ladies' Garment Workers' Union in an election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

K.G. KNITTING MILLS, INC.